(1) Automated information systems which are required by a State or local agency, except for those used in general; management and payroll, including purchase of automatic data processing hardware or software whether by outright purchase, rental-purchase agreement or other method of acquisition. Approval shall be granted by FNS if the proposed system meets the requirements of this part, A–90 and 7 CFR Part 3015. When a State agency decides to seek computerization, except for use in general management or payroll, it shall inform FNS and seek approval, if required.

* * * * *

(d) *Recovery of vendor claims.* Funds collected by the recovery of claims assessed against food vendors shall be retained by the State agency. The State agency may use up to 50 percent of these funds for administrative purposes and the remainder shall be used to pay food costs. When these funds are used for administrative purposes, such expenditures shall be reported to FNS through routine reporting procedures.

4. In Section 246.18, paragraph (a) is amended by adding two new sentences at the end to read as follows:

§ 246.18 Claims and penalties.

(a) * * * FNS is authorized to establish claims against a State agency for unreconciled food instruments. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the food instruments issued have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

* * * * *

5. In Section 246.19 paragraph (c)(1)(ii) is revised to read as follows:

§ 246.19 Management evaluations and reviews.

* * * * *

(C) * * *

(1) * * *

(ii) In accordance with § 246.10(i), the State agency shall ensure that State or local agency personnel conduct the necessary on-site monitoring visits of high risk and representative vendors. If the State agency delegates vendor monitoring to local agencies, then it shall evaluate the effectiveness of those monitoring visits.

* * * * *

§ 246.23 [Amended]

6. Section 246.23 is amended by removing the word "suspension" and inserting, in its place, the word "disqualification" in paragraphs (a) and (c).

Signed in Washington, D.C. on May 21, 1982.

John W. Bode,

Deputy Assistant Secretary for Food and Consumer Services.

[FR Doc. 82–14627 Filed 5–27–82; 8:45 am]

BILLING CODE 3410–30–M

federal register

Friday
May 28, 1982

Part IV

Department of Labor

Mine Safety and Health Administration

Nonsubstantive Organizational Amendments and Nomenclature Changes

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48, 49, 57, 75 and 77

Nonsubstantive Organizational Amendments and Nomenclature Changes

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Secretary of Labor has reorganized certain Mine Safety and Health Administration (MSHA) field responsibilities related to education and training. This final rule amends the affected MSHA regulations to conform them to this reorganization.

EFFECTIVE DATE: May 28, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: The Mine Safety and Health Administration has reorganized the Agency's education and training functions. The following responsibilities are affected: administration of miner training programs (30 CFR 48), administration of mine rescue team training programs (30 CFR 49), administration of mine emergency training for metal and nonmetal mines (30 CFR 57.18–28), administration of qualified and certified person programs for coal mines (30 CFR 75.153, 75.160–1, 77.103, 77.107–1), administration of supervisory first aid training programs for coal mines (30 CFR 75.1713–3 and 77.1703) and administration of training at new underground coal mines (30 CFR 75.1721). These functions have been transferred from the Office of Education and Training to the Administrator of Coal Mine Health and Safety and the Administrator of Metal and Nonmetal Health and Safety. Specifically, the functions that were previously the responsibility of the MSHA training centers will now be performed by the MSHA District Managers. Therefore, on all education and training matters, the appropriate District Manager should be contacted. The Office of Education and Training has been redesignated the Office of Education and Policy Development and will be primarily responsible for assuring a consistent overall education and training policy. MSHA believes that this reorganization will result in improved efficiency and effectiveness in the administration of MSHA's training programs. These amendments do not in any way diminish miner health and safety.

I. Rulemaking Procedure

These amendments involve nonsubstantive matters relating to agency management, organization and procedures. Therefore, these amendments are exempt from the notice and comment procedures of 5 U.S.C. 553 under 553(a)(2) and (b)(A).

II. Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

These amendments relate solely to agency organization, personnel and management. Therefore, this final rule is exempt from the requirements of Executive Order 12291 under Section 1(a)(3) of the Order. These amendments are also exempt from the requirements of the Regulatory Flexibility Act. This final rule contains no paperwork requirements.

III. Drafting Information

The principal persons responsible for the drafting of this final rule are John Honecker, Office of Standards, Regulations and Variances, Mine Safety and Health Administration; and Manuel R. Lopez, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Dated: May 25, 1982.

Ford B. Ford,

Assistant Secretary for Mine Safety and Health.

This final rule amends Chapter I, Title 30, Code of Federal Regulations, Parts 48 and 49 of Subchapter H, Part 57 of Subchapter N, and Parts 75 and 77 of Subchapter O, as set forth below. The amendments are arranged in sequential order as they appear in CFR Title 30. For each amendment, the previous wording (which is removed) of the affected section is stated in the first column and the new wording (which is added) is stated in the second column.

Previous wording	New wording
§ 48.3(b):	
"Chief of the Training Center, MSHA,".	"District Manager".
§ 48.3(c):	
"Chief of the Training Center, MSHA,".	"District Manager".
§ 48.3(d):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"chief of the training center"	"District Manager".
§ 48.3(e):	
"Chief of the Training Center"	"District Manager".
"Office of Education and Training, MSHA".	"District Manager".
"Chief of the Training Center"	"District Manager".
"Office of Education and Training, MSHA".	"District Manager".
"by the Office of Education and Training, MSHA,".	
"Office of Education and Training, MSHA".	"District Manager".
§ 48.3(h):	
"Office of Education and Training, MSHA,".	"District Manager".
§ 48.3(h)(1):	
"Office of Education and Training, MSHA,".	"District Manager".
"Office of Education and Training, MSHA,".	"District Manager".
"Office of Education and Training".	"Office of Education and Policy Development".
§ 48.3(h)(3):	
"Chief of the Training Center"	"District Manager".
"Training Center Chief"	"District Manager".
§ 48.3(i):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Director of Education and Training".	"Administrator".
"Chief of the Training Center's".	"District Manager's".
"chief of the training center"	"District Manager".
§ 48.3(j):	
"Chief of the Training Center"	"District Manager".
§ 48.3(j)(1):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
§ 48.3(j)(2):	
"Chief of the Training Center"	"District Manager".
§ 48.3(l):	
"Chief of the Training Center, MSHA, in".	"District Manager of".
"Training Center Chief"	"District Manager".
§ 48.3(m):	
"Chief of the Training Center or the Director of Education and Training".	"District Manager".
"Chief of the Training Center or the Director of Education and Training".	"District Manager".
§ 48.3(n):	
"Chief of the Training Center or the Director of Education and Training".	"District Manager".
§ 48.4(b):	
"Chief of the Training Center"	"District Manager".
§ 48.5(b)(14):	
"Training Center Chief"	"District Manager".
§ 48.6(b)(8):	
"Training Center Chief"	"District Manager".
§ 48.7(a)(4):	
"Training Center Chief"	"District Manager".
§ 48.8(b)(12):	
"Training Center Chief"	"District Manager".
§ 48.11(a)(5):	
"Chief of the Training Center"	"District Manager".
§ 48.12:	
"Training Center Chief"	"District Manager".
§ 48.12(a):	
"Training Center Chief"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Chief of the Training Center's".	"District Manager's".
§ 48.12(b):	
"Director of Education and Training".	"Administrator".
"Chief of the Training Center"	"District Manager".
"Director"	"Administrator".
§ 48.12(c):	
"Director of Education and Training".	"Administrator".
§ 48.23(b):	
"Chief of the Training Center, MSHA".	"District Manager".

Previous wording	New wording
§ 48.23(c):	
"Chief of the Training Center, MSHA,".	"District Manager".
§ 48.23(d):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
§ 48.23(e):	
"Chief of the Training Center"	"District Manager".
"Office of Education and Training, MSHA,".	"District Manager".
"Chief of the Training Center"	"District Manager".
"Office of Education and Training, MSHA".	"District Manager".
"by the Office of Education and Training, MSHA,".	
"Office of Education and Training, MSHA,".	"District Manager".
§ 48.23(h):	
"Office of Education and Training, MSHA,".	"District Manager".
§ 48.23(h)(1):	
"Office of Education and Training, MSHA,".	"District Manager".
"Office of Education and Training, MSHA,".	"District Manager".
"Office of Education and Training".	"Office of Education and Policy Development".
§ 48.23(h)(3):	
"Chief of the Training Center"	"District Manager".
"Training Center Chief"	"District Manager".
§ 48.23(i):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Director of Education and Training".	"Administrator".
"Chief of the Training Center's".	"District Manager's".
"Chief of the Training Center"	"District Manager".
§ 48.23(j):	
"Chief of the Training Center"	"District Manager".
§ 48.23(j)(1):	
"Chief of the Training Center"	"District Manager".
"Chief of the Training Center"	"District Manager".
§ 48.23(j)(2):	
"Chief of the Training Center"	"District Manager".
§ 48.23(l):	
"Chief of the Training Center, MSHA, in".	"District Manager of".
"Training Center Chief"	"District Manager".
§ 48.23(m):	
"Chief of the Training Center or the Director of Education and Training".	"District Manager".
"Chief of the Training Center or the Director of Education and Training".	"District Manager".

Previous wording	New wording
§ 48.23(n):	
"Chief of the Training Center or the Director of Education and Training".	"District Manager".
§ 48.24(b):	
"Chief of the Training Center"	"District Manager".
§ 48.25(a):	
"Chief of the Training Center"	"District Manager".
"Training Center Chief"	"District Manager".
§ 48.25(b)(13):	
"Training Center Chief"	"District Manager".
§ 48.26(b)(8):	
"Training Center Chief"	"District Manager".
§ 48.27(a)(4):	
"Training Center Chief"	"District Manager".
§ 48.28(b)(11):	
"Training Center Chief"	"District Manager".
§ 48.31(a)(5):	
"Chief of the Training Center"	"District Manager".
§ 48.32:	
"Training Center Chief"	"District Manager".
§ 48.32(a):	
"Training Center Chief"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Chief of the Training Center's".	"District Manager's".
§ 48.32(b):	
"Director of Education and Training".	"Administrator".
"Chief of the Training Center"	"District Manager".
"Director"	"Administrator".
§ 48.32(c):	
"Director of Education and Training".	"Administrator".
§ 49.8(a):	
"Office of Education and Training".	"Office of Education and Policy Development".
§ 49.8(b)(4):	
"Office of Education and Training".	"Office of Education and Policy Development".
§ 49.8(d)(2):	
"Office of Education and Training".	"District Manager".
"Office of Education and Training".	"District Manager".
§ 49.8(e):	
"Chief of the Training Center"	"District Manager".
"Training Center Chief"	"District Manager".
"Director of Education and Training".	"Administrator for Coal Mine Safety and Health or Administrator for Metal and Non-metal Safety and Health, as appropriate".
"Director of Education and Training".	"Administrator".
§ 49.8(f):	
"Office of Education and Training, MSHA".	"District Manager".

Previous wording	New wording
§ 57.18-28(a):	
"Mine Safety and Health Administration, Division of Education and Training Operations, to give such instruction".	"District Manager of the area in which the mine is located".
§ 57.18-28(b):	
"Mine Safety and Health Administration, Division of Education and Training Operations to give such instructions".	"District Manager of the area in which the mine is located".
"Mine Safety and Health Administration, Division of Education and Training Operations to give such instruction".	"District Manager".
§ 57.18-28(d):	
"Nearest Mine Safety and Health Administration training center".	"District Manager".
§ 57.18-28(e):	
"Mine Safety and Health Administration training center or".	
§ 75.153(c):	
"Training Center Chief of the Training Center".	"District Manager".
"The MSHA Training Districts".	"Coal Mine Safety And Health Districts".
§ 75.153(g):	
"Training Center Chief of the Training District wherein he is employed,".	"District Manager".
§ 75.160-1:	
"Training Center Chief"	"District Manager".
§ 75.1713-3:	
"Training Center Chief"	"District Manager".
"Training Center Chief"	"District Manager".
§ 75.1721(a):	
"Or Training Center Chief as appropriate".	
§ 75.1721(c):	
"Training Center Chief"	"District Manager".
§ 77.103(c):	
"Training Center Chief of any Training Center".	"District Manager".
"The MSHA Training Districts".	"Coal Mine Safety and Health Districts".
§ 77.103(g):	
"Training Center Chief of the Training District wherein he is employed,".	"District Manager".
§ 77.107-1:	
"Training Center Chief of the Training Center".	"District Manager of the Coal Mine Safety and Health District.".
§ 77.1703:	
"Training Center Chief"	"District Manager".
"Training Center Chief"	"District Manager".

[FR Doc. 82-14656 Filed 5-27-82; 8:45 am]

BILLING CODE 4510-43-M

federal register

Friday
May 28, 1982

Part V

Department of Labor

Wage and Hour Division, Employment Standards Administration

Office of the Secretary

Procedures for Predetermination of Wage Rates; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

Office of the Secretary

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations, 29 CFR Part 1, for the predetermination of prevailing wage rates under the Davis-Bacon and Related Acts. The method of determining prevailing wage rates has been revised and a provision for the issuance of semi-skilled classifications on wage determinations has been added.

DATES: Effective date: July 27, 1982. See Supplementary Information for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On December 28, 1979, a proposal was published in the **Federal Register** (44 FR 77026) to make certain revisions to 29 CFR Part 1, Procedures for Predetermination of Wage Rates under the Davis-Bacon and Related Acts. As stated in the proposal, its purpose was to reexamine and revise the procedures in Part 1 for predetermination of wage rates under the Davis-Bacon and Related Acts.

On January 16, 1981, this regulation was published in the **Federal Register** (46 FR 4306) as a final rule with a scheduled effective date of February 17, 1981. However, pursuant to the President's Memorandum of January 29, 1981, the Department published a notice in the **Federal Register** on February 6, 1981 (46 FR 11253), delaying implementation of this regulation until March 30, 1981. The Department subsequently delayed the implementation of this regulation until August 15, 1981 in order to permit reconsideration pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); and 46 FR 36140 (July 14, 1981).

On August 14, 1981, a new regulatory proposal developed in accordance with Executive Order 12291 was published in the **Federal Register** (46 FR 41444), and the previously published rule was further postponed until action could be taken on the new proposal. (See 46 FR 41043.)

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division withing 60 days after publication of the proposal in the **Federal Register.** Comments were received from approximately 2,200 interested parties, including Members of Congress, contracting agencies, contractor associations, contractors, labor organizations, State and local governmental agencies, business organizations, and individuals. Many comments were received either supporting or opposing the proposal in general. More than 1,000 comments (mostly from construction firms and associations) were directed solely to the issue of helpers in this proposal and a related proposal in 29 CFR Part 5.

Contractor associations and business organizations submitting comments included the Associated General Contractors of America (AGC), the Associated Builders and Contractors, Inc. (ABC), the National Association of Home Builders (NAHB), the Chamber of Commerce of the United States (C of C), the National Association of Manufacturers (NAM), the Business Roundtable, the National Federation of Independent Business (NFIB), the National Utility Contractors Association (NUCA), the Sheet Metal and Air Conditioning Contractors' National Association, Inc. the American Road and Transportation Builders Association, the National League of Cities (NLC), the National Association of Counties, the Council of State Housing Agencies, the National Sand and Gravel Association, and the National Ready Mixed Concrete Association. Labor organizations commenting on the proposal included the Building and Construction Trades Department of the AFL–CIO (BCTD), the Laborers' International Union of North America (LIUNA), the United Brotherhood of Carpenters and Joiners of America (UBC), the International Brotherhood of Electrical Workers (IBEW), the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (UA), the International Brotherhood of Teamsters (Teamsters), the International Association of Bridge, Structural and Ornamental Iron Workers (Iron Workers), the International Union of Operating Engineers (IUOE), the United Automobile Workers of America (UAW), the Sheet Metal Workers' International Association (SMW), the Operative Plasterers' and Cement Masons' International Association (OPCM), and the International Brotherhood of Painters and Allied Trades (PAT). Among those Federal agencies submitting comments were the Department of Defense of Defense (DOD), the Department of Transportation (DOT), the Department of Energy (DOE), the National Aeronautics and Space Administration (NASA), the U.S. Postal Service (USPS), and the Small Business Administration (SBA).

Discussion of Major Comments

The following is an analysis of all the principal comments received and the corresponding changes, if any, made to the proposed rule. Each submission has been thoroughly reviewed, and each criticism and suggestion has been given careful consideration. For each section and, where appropriate, subsection of the final rule, the analysis contains a description of the major comments, the Department's conclusions regarding those comments, and the substantive changes herein adopted.

Section 1.2(a)—Definition of Prevailing Wage

Numerous comments favoring the proposal to eliminate the 30 percent rule were received from such parties as the AGC, NAM, NLC, USPS, local government agencies, contractors, and State contractor associations. These commentators stated that a rate based on 30 percent does not comport with the definition of "prevailing", and that the 30 percent rule gives undue weight to collectively bargained rates. Commentators also asserted that the 30 percent rule is inflationary because it sometimes results in wage determination rates higher than the average.

Other contractors and associations, while agreeing in principle with the proposal's elimination of the 30 percent rule, asserted that the proposed change in the definition of prevailing wages did not go far enough. Several commentators, including the ABC, NAHB, and the Council of State Housing Agencies, recommended that the weighted average rate be used in all cases. The C of C and some others recommended that the prevailing rate be determined either by eliminating the higher 50 percent of the wage rates paid in a locality and adopting the weighted average of the lower 50 percent of the wages paid, or by adopting the entire

range of wage rates existing in a locality.

The BCTD, a few contractor associations, and some State labor departments commented in favor of retaining the current 30 percent rule for determining prevailing wages. The major arguments made by these commentators were that the term "prevailing" contemplates the most frequently paid actual rate and thus, even the 30 percent rule unduly constricts the meaning of the statutory language; that an average rate is an artificially determined rate and therefore less consonant with the legislative intent than a rate which is actually paid; that the rule has been used by the Department since 1935 and was specifically endorsed by the House Special Subcommittee on Labor in 1962; and that elimination of the rule would disrupt labor relations and harm the competitive standing of unionized firms. The BCTD also asserted that any immediate wage savings would be more than offset by lower productivity, and thus, that overall construction costs would increase.

The Department agrees with the criticisms of the 30 percent rule. However, the Department has rejected the suggestion to define the prevailing wage as the weighted average wage in all cases because the term "prevailing" contemplates that wage determination rates mirror, to the extent possible, those rates actually paid in appropriate labor markets. In addition, the definitions of prevailing wage urged by the C of C are contrary to the prevailing wage concept embodied in the Davis-Bacon Act. Using the average of the lower 50 percent of wage rates paid would exclude the higher 50 percent of wages from consideration and, therefore, could not be considered the prevailing wage. Similarly, adopting the entire range of wages in the locality would permit contractors to pay the lowest wage that exists for a particular classification, rather than the "prevailing" rate.

Based on the comments and our analysis of the statute, we have concluded the term "prevailing wage" contemplates the most widely paid rate as a definition of first choice. The Department has accordingly determined that the revision which defines prevailing wage as the majority, or weighted average where there is no majority, is the most proper interpretation of the statute. Section 1.2(a) is therefore adopted as proposed.

Section 1.3—Wage Data Considered—Use of Wage Data From Projects Subject to Davis-Bacon

The preamble to the proposed regulations solicited comments on whether projects subject to Davis-Bacon wage determinations should be excluded from the Department's wage surveys. Comments were specifically invited on the feasibility of differentiating Federal projects in wage surveys; the feasibility of determining prevailing wages for categories of construction which almost always involve Federal funding, if such projects are excluded; and the feasibility of differentiating projects where the contractor would otherwise have paid the wages contained in the wage determination.

Several commentators, including ABC, NAHB, NASA, and DOE, favored excluding Federal projects from wage surveys in all cases, although they did not comment specifically on the feasibility of such an exclusion. These commentators asserted that the Act was intended to require contractors to pay, at a minimum, those rates found to be prevailing on *private* construction projects in the area in which the federal work is to be performed. These commentators argued that including wage data from construction projects subject to the Act in surveys skews the survey results upward. DOT commented that it saw no problem in excluding wages paid on Federal projects from surveys. It recommended that such data be excluded except in those cases where there is not a sufficient sample of privately financed construction to establish a wage rate.

The BCTD, most building trades unions, the Teamsters, the United Auto Workers, the Minnesota Building and Construction Trades Department, the North Carolina and Iowa Departments of Transportation, the Texas Highway Department, the Texas Heavy-Highway Branch of AGC, and the Colorado Contractors Association opposed the exclusion of Federal wage data. Many of the union commentators asserted that the Act's legislative history shows no Congressional intent to restrict wage surveys to privately financed projects, and that the 1935 amendments extending the Act's coverage to public works implied that Federal projects would be surveyed since the Act requires payment of wages prevailing on projects "of a character similar", and there are few projects of a character similar to public works which are not federally financed.

Most commentators in opposition to the exclusion claimed that, as a practical matter, it would be administratively difficult or even impossible to establish wage determination rates for several types of construction projects that are always or nearly always federally financed, such as highways, bridges, dams, and sewage treatment plants, and for certain craft classifications in rural areas. The MBCTD claimed that it would also be administratively difficult and costly to determine whether a given wage rate would have been paid absent a wage determination, noting that the State of Minnesota had attempted to make such a differentiation in its wage surveys but was unable to do so.

The Department has concluded that, where practicable, it would be appropriate to exclude wage data from Davis-Bacon projects in determining prevailing wages. The Department also believes this result is in accordance with the statutory purpose. Accordingly, § 1.3 has been revised to provide that wages paid on projects subject to the Davis-Bacon Act will not be considered in developing wage determinations for "building" and "residential" projects unless the Department finds that there is not sufficient data from privately financed construction projects of a similar character to determine prevailing wages. We have also concluded that it would not be practical to determine prevailing wages for "heavy" and "highway" construction projects if Davis-Bacon covered projects are excluded in making wage surveys because such a large portion of those types of construction receive Federal financing. The regulation therefore permits the use of such data on these types of projects.

Section 1.6(a)(1)—Expiration Date of Project Wage Determinations

Several commentators, including ABC, AGC, and some State contractor associations, commented in favor of the proposal to extend the expiration date of project wage determinations from 120 days to 180 days.

The BCTD, the Teamsters, the UAW, and others opposed this proposed change, claiming that extending the duration of project determinations will increase the likelihood that rates contained in wage determinations will be out of date before the start of construction.

Extending the life of project wage determinations to 180 days will reduce the need for recompetition and other procurement delays caused by the expiration of such determinations after bid opening. Also, as a practical matter, it is the Department's experience that

most such determinations are used within a shorter period of time. Accordingly, this proposal is deemed reasonable and is adopted.

Section 1.6(b) and Appendix C

Several State chapters of AGC objected to the categorization of construction in proposed Appendix C (which embodies the substance of All Agency Memoranda Nos. 130 and 131) on the ground that it would amount to an imposition of standards that are nationwide in scope, ignoring local area construction practices. A few contractor associations stated that the categories of construction overlapped. Some associations disagreed with the proposed categorization of certain types of work. Contractor groups also suggested that the regulations require agencies to state specifically in the contract which schedule of wage rates is applicable.

The Department has reconsidered the advisability of including in the regulations the specific guidelines of All Agency Memoranda Nos. 130 and 131. It has concluded that the best interests of all concerned parties would be more fully served by retaining the Memoranda as guidelines rather than as regulations. However, in the near future the Department will amend the guidelines and issue a new memorandum to all federal agencies to insure that local practices will be the primary consideration in resolving disputes in this area. The Department will also publish this new memorandum as a notice to the public in the **Federal Register.**

Section 1.6(b) has also been amended to clarify that contracting agencies are responsible for identifying as specifically as possible the appropriate schedule(s) to be applied to a contract.

Accordingly, Appendix C is deleted from the regulations.

Section 1.6(c)—"10-Day Rule"; "90-Day Rule"

Several commentators, including ABC, NASA, DOE and some State highway agencies, objected to the proposed revisions of the "10-day rule" which would (1) require contracting agencies to accept modifications to wage determinations received less than 10 days before the opening of bids unless the agency finds there is not sufficient time to notify bidders of the modification, and (2) also require the agency to insert a report of such finding in the contract file, and make it available to the Administrator upon request. Most of these commentators recommended that the current "10-day rule" (which requires agencies to use modifications received less than 10 days before bid opening only if it is found that there is sufficient time to notify bidders) be retained, while others recommended that a 20-, 25-, or 30-day rule be adopted.

DOL's policy has been that bid solicitations should contain the most recently issued determination of current prevailing wages which can be included without causing undue disruption of the procurement process. However, in the past, many contracting agencies have declined to use wage modifications received less than 10 days before bid opening, even though there may have been more than sufficient time to notify bidders of the modification prior to bid opening.

The courts have held that the current "10-day rule" imposes an affirmative obligation on the contracting agencies to make a substantive determination as to whether there is sufficient time to notify bidders of modifications received less than 10 days before bid opening. (*Operating Engineers, Local 627* v. *Arthurs,* 355 Supp. 7 (W.D. Okla.), *Aff'd,* 480 F. 2d 603 (10th Cir. 1973).) In view of this obligation and the Department's experience that the agencies often misunderstand that obligation to make such a determination, it was decided that the Act could be better implemented by adopting the proposed revision. DOL also believes that the notification process can be completed in most cases without undue disruption of the procurement process or inflation of bid prices. Of course, it is recognized that there may be cases where an agency will find that it is not feasible to adopt modifications less than 10 days before bid opening. In such cases, the agency would simply be required to document its finding of insufficient time prior to bid opening and incorporate this finding in the contract file. While we have considered the objections to this reporting requirement, we find that written documentation of the agency's finding of insufficient time is in accord with sound administrative practices and does not impose an undue paperwork burden upon the agency.

ABC objected to the "90-day rule", which provides that if a contract to which a general wage determination has been applied has not been awarded within 90 days after bid opening, any modification published prior to contract award would be effective unless the agency has obtained an extension of the 90-day period from the Administrator. ABC asserted that the proposed rule would be disruptive to the procurement process and is beyond DOL authority.

The Department's obligation to insure that the most current determination of prevailing wages is included in contracts subject to the DBA is frustrated by lengthy delays which occur between bid opening and contract award. Further, the regulation permits the agency to request an extension of the 90-day period in cases of undue hardship. Therefore, we believe the "90-day rule" is appropriate.

Since it is the Department's experience that projects assisted under the National Housing Act and section 8 of the U.S. Housing Act of 1937 are not generally competitively bid and since it therefore would be confusing to suggest that the 10-day rule could apply to such projects, the Department has determined upon review that the references to competitive bidding should be deleted from the pertinent paragraphs in § 1.6(c). No other changes are being made in this section.

Section 1.6 (e) and (f)—Incorporation of Wage Determinations and Modifications After Contract Award

A few commentators questioned DOL's authority to require the incorporation of a new wage determination in a contract any time before award (or in some cases, after award) when the agency fails to include any wage determination in a covered contract, or has used an inapplicable wage determination or one that contains substantial errors. DOT, DOE, and NASA asserted that the contracting agency, not DOL, has authority to make determinations of coverage under the Davis-Bacon Act. ABC commented that the provisions in question are disruptive, and that the regulations should contain more specific criteria regarding the circumstances in which DOL would exercise its authority to incorporate new wage determinations.

The BCTD, several building trades unions, the Teamsters, and the UAW objected to the provision in § 1.6(f) that corrective action to include the proper wage determination after contract award would occur only if the contractor is compensated, in accordance with applicable procurement law, for any increase in wages resulting from such action, asserting that the agencies could use this provision to resist post-award amendment of any contract which contains an invalid wage determination.

Since the Davis-Bacon Act requires that all covered contracts contain an applicable wage determination, DOL must provide some mechanism for the incorporation of proper wage determinations in covered contracts after contract award. The Department's authority in this regard, including the

authority to determine questions of coverage under the Act, is derived from the Act as well as from Reorganization Plan 14 of 1950.

With respect to the ABC comment, the Department agrees that the provision in § 1.6(e)(2) permitting withdrawal of wage determinations containing "substantial errors" without regard to the 10-day rule is not sufficiently specific. Accordingly, § 1.6(e)(2) is revised to permit such withdrawals only as a result of a decision by the Wage Appeals Board.

As to the comments from labor organizations, we believe it would be inequitable to require corrective action after contract award if the contractor would be financially harmed in rectifying a Government error. Nor should contracting agencies be placed in the position of contravening procurement law. The regulation contemplates that the agencies will find a method to incorporate a proper wage determination in a contract and compensate a contractor, where appropriate, which is in accord with procurement law. Accordingly, no changes are made in § 1.6(f).

Section 1.7(b)—Scope of Consideration

Numerous commentators, including AGC, ABC, NLC, NAHB, State contractor associations, and individual contractors, agreed with the proposal to prohibit the use of wage survey data obtained from a metropolitan area in issuing a wage determination for a rural area, and vice versa. Their rationale was that this provision would prevent the "importation" of generally higher metropolitan wages into lower paid rural areas. NUCA commented that in the past, such importation has disrupted labor relations in rural areas, because employees who received high wages on a Davis-Bacon project were unwilling to return to their usual pay scales after the project was completed.

The BCTD and many individual building trades unions opposed the blanket prohibition. Several of these commentators stated that there is a need to retain flexibility in certain cases when wage data are unavailable in the rural area where the work will be performed, and that "importing" rates from nearby metropolitan areas in such cases is justified because workers from metropolitan areas often perform the work due to a shortage of skilled labor in the vicinity of the project.

Several commentators, including the AGC and some of its local chapters, noted that the definition of "area" in § 1.2(b) of this part includes political subdivisions smaller than the county, and claimed that our reliance in § 1.7(a) on the county as the normal survey area is not consistent with the intent of the Davis-Bacon Act. They suggested that DOL consider smaller local civil subdivisions within the county as the basis for making wage determinations. Other commentators, including the Texas Highway Department, the Texas Heavy-Highway Branch of AGC, and the Carolinas Branch of AGC, urged the Department to expand the area of consideration to the Standard Metropolitan Statistical Area or some other larger area, in cases where the same wage pattern exists throughout the area.

The Department has determined that its past practice of allowing the use of wage data from metropolitan areas in situations where sufficient data does not exist within the area of a rural project is inappropriate. Therefore, the prohibition proposed against this practice is adopted.

In response to the union comments, the Department notes that if sufficent data is not available from contiguous rural counties, it would be obtained from other rural counties in the State, and if, as these comments suggested, large numbers of workers from metropolitan areas typically work at higher metropolitan wage rates on projects in rural areas, those higher wages would be found and receive proper weight in surveys of wages paid in such areas.

With respect to comments on the size of the survey area, experience has demonstrated that the standard, but not inflexible, practice of using the county as the area of consideration is the most administratively feasible approach to collecting meaningful data. In our view, this practice is in accord with the Act. In answer to the commentators who suggested that we recognize areas larger than one county, where a survey reflects that the same rate in fact prevails in several contiguous counties within a State, a single wage determination may be used for the entire area.

Section 1.7(d)—Helpers

A very large number of commentators, particularly various contractor associations such as ABC and AGC and their affiliates, the NAM, NAHB, the Business Roundtable, the C of C, and numerous individual nonunion contractors, generally favored the proposal to increase recognition of helper classifications. They noted that the proposal reflects the construction industry's actual practice on private projects, and they stated that adoption of the proposal would result in increased job opportunities for youth, women, and minorities.

The building trades unions and some State and local governmental agencies opposed increased recognition of helpers on the grounds that this would undermine formally established apprentice and trainee programs to the determent of minorities and unskilled workers. In their view, it would also lead to shortages of qualified journeymen. Most union groups felt the proposal was contrary to the statute because it allows the use of helpers without a finding that such a classification practice prevails in the area.

The Department currently recognizes a helper classification only where it is a separate and distinct class of workers which prevails in the area, and where the helpers' scope of duties can be differentiated from those of journeymen. The Department has concluded this restrictive approach is inappropriate. Increased recognition of helpers will reflect the widespread industry practice of employing semi-skilled workers on construction projects, including both helpers working in a particular craft and cross-craft or general utility helpers. This will not only result in considerable cost savings to the Government but will result in more job opportunities for unskilled and semi-skilled workers (including youth, women, and minorities) and encourage their use in a manner which provides training. It will enhance productivity by allowing such workers to do tasks requiring more limited skills, thus allowing higher skilled workers to use their skills more effectively. It will also enable more contractors to compete for Government work. (See also the related changes proposed to 29 CFR Part 5 regarding the allowable use of helpers and the discussion of comments received thereon.)

Accordingly, § 1.7(d) is adopted with clarifying changes.

In addition to the above, minor editorial and language changes have been made in some sections.

Classification

This rule would not appear to require a regulatory impact analysis under Executive Order 12291 since the changes will result in substantial cost savings annually for both contractors and the Government while still assuring protection of local labor standards. However, because of the importance to the Government and the public of the issues involved, the Department has concluded that the regulation should be deemed a "major rule" for purposes of the Executive Order. It has been determined, in accordance with

Executive Order 12291, that these changes are the most cost-effective regulatory alternatives consistent with the purpose of the statute.

Summary of Final Regulatory Impact and Regulatory Flexibility Analysis

The Department has prepared its final regulatory impact analysis to identify and quantify the cost impact of the final Davis-Bacon regulations and various alternatives that were explored and to inform the public of the economic considerations behind these final revisions in accordance with Executive Order 12291.

The final analysis builds upon a preliminary regulatory impact analysis (PRIA) which accompanied the proposed revisions published on August 14, 1981 (46 FR 41444). The PRIA estimated that the proposed changes would result in substantial cost savings amounting to at least $670 million annually to both contractors and procuring agencies, while still assuring protection of local wage rates and practices. The Department requested comments and additional information on all economic assumptions used in the analysis, as well as any alternative suggestions designed to achieve the objectives of the Davis-Bacon and Related Acts at lower costs. The Department received numerous comments on the PRIA estimates and its economic assumptions. The Department has carefully reviewed all of these comments in finalizing the regulations and has incorporated these considerations, as appropriate, into the final regulatory impact analysis (FRIA).

The final rule must also consider the Regulatory Flexibility Act of 1980. This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The analysis summarized below meets the requirements set forth for assessing the economic impact of the final changes in the Davis-Bacon regulations on small entities as required under the Regulatory Flexibility Act.

A. Definition of "Prevailing" Rate

The existing regulations define the "prevailing" rate as the rate paid to the majority of the employees in a classification; or if there is no majority, the rate paid to the greatest number, provided it constitutes at least *30 percent* of the employees in the classification; or if no single rate is paid to at least 30 percent of the employees, the *weighted average* rate.

The proposed regulation re-defined the "prevailing" rate as the single rate paid to a majority of workers in a particular classification on similar construction in the locality, or the weighted average rate if no single rate is paid to a majority. The PRIA estimated that elimination of the "30 percent" rule would result in substantial cost savings on Federal and federally assisted construction contracts amounting to at least $120 million in Fiscal Year 1982 alone.

Many commentators on the preliminary analysis argued that the $120 million estimate of cost savings was too high. Construction unions generally faulted the analysis for ignoring the productivity differences between workers and for implicitly assuming that all workers on covered construction projects earn the prevailing (Davis-Bacon) rate. The Building and Construction Trades Department (BCTD) placed the maximum cost savings at $45 million annually and advocated retention of the current definition. In contrast, most contractor associations (which generally advocated greater revision of the definition) argued that few cost savings would result from the proposal because the wages of many workers are fixed by collective bargaining agreements. These groups offered alternative estimates ranging from no cost savings to $50 million.

While acknowledging the validity of several of these criticisms, it remains our position that the $120 million estimate represents a "best guess" of the likely cost savings. Many of the alternative estimates were based on an inaccurate reading of our methodology, which in fact took into account that few cost savings would result in highly unionized urban areas. In other cases, the direction of the bias asserted to exist in our PRIA by the comments was unclear, rather than working to inflate the cost savings. Moreover, the commentators ignored significant negative biases which would raise the cost savings, such as the bias resulting from the lack of construction wage data for small cities. All of the limitations associated with our methodology are clearly spelled out in the analysis.

After careful review of all the evidence, the Department has adopted the proposed definition not only because it will result in substantial budgetary savings, but also because it is most consistent with the "prevailing wage" concept contemplated in the legislation, under which rates are designed to mirror, to the extent possible, those customarily paid in appropriate labor markets.

The Department also considered defining the "prevailing" rate as the average in all cases as proposed by the Associated Builders and Contractors Inc. (ABC). This alternative was not selected because the term "prevailing" contemplates the most widely paid rate as a definition of first choice.

Several other alternatives were also considered including (1) setting wage determinations at the average of rates in the lower half of wage distributions for crafts in a locality (as proposed by the United States Chamber of Commerce); (2) issuing wage determinations as a range of wage rates reflecting the actual distribution of wages in a locality (also proposed by the United States Chamber of Commerce); and (3) allowing procurement agencies to set rates based on, rather than identical to, DOL determinations (the "decoupling" approach). The Department has carefully considered these options, but concluded that they would not be consistent with the statute's intent.

The DOL methodology which is the basis for the $120 million estimate of cost savings calculates the change in wage costs under different decision rules by comparing a large sample of 1,170 Davis-Bacon craft determinations in effect in 1981 with average wage rates for those crafts and localities derived from field surveys conducted by the Employment Standards Administration (ESA). Our sample covered nine crafts and three types of construction (i.e., building, highway and heavy and residential) across all regions of the country.

Because we know the decision rule actually used in setting each Davis-Bacon determination in the sample and the wage rates paid workers in geographic areas, the impact on Davis-Bacon rates of any change in administrative procedures can be readily determined. For example, to evaluate the percentage change expected in Davis-Bacon rates associated with dropping the 30 percent rule, all determinations in the sample based on this rule were compared with their corresponding average rates to calculate the percent differences in the Davis-Bacon rates. For those determinations based on the majority or average rule, the percent differences were set at zero.

However, many Davis-Bacon determinations are not based on comprehensive wage surveys but rather on collective bargaining agreements or state surveys. Hence, results based solely on the sample will be biased if there is a higher frequency of determinations based on the 30 percent

rule in non-surveyed areas. Clearly, average rates cannot be issued without a wage survey; hence, it is likely that Davis-Bacon determinations are implicitly based more frequently on the 30 percent rule in non-surveyed areas.

To adjust our estimates for this possible sample bias, we used both survey data and independent sources to construct estimates of percent differences for all areas lacking surveys. For example, in large urban areas where wage determinations are based on collective bargaining agreements, information on the percentage of workers who are unionized in the area was used to determine the impact of using the majority rule or the average. Where the extent of unionization was sufficiently high, current rates could be expected to prevail even in the absence of the 30 percent rule. We, therefore, assumed that there would be no change in Davis-Bacon rates. Otherwise, we used estimates of percent changes from Davis-Bacon rates to average rates derived from a CEA study of less unionized urban areas.

With estimates in hand for each county, we then summed the percentage differences for each type of construction across all geographic areas (both rural and urban) based on their relative contribution to total public construction activity. This resulted in three separate estimates of the expected percentage change in Davis-Bacon wage rates from adopting different administrative procedures, one for each construction sector.

The final step involves matching these percent changes in wages to estimates of the total labor costs expected to be covered by Davis-Bacon in Fiscal Year 1982 for each type of construction. We then added up the separate labor cost savings estimates for each construction sector to form our final estimate of the aggregate wage cost savings from alternative wage determination rules. The final regulatory impact analysis describes the methodology in further detail.

This methodology was used to estimate the cost impact of dropping the 30 percent rule and of using the average rule in all cases. This procedure produced cost savings ranging from $68 million to $173 million from eliminating the 30 percent rule. The average cost savings in this range is around $120 million. The corresponding estimates of cost savings from switching to an average rule in all cases range from $127 million to $288 million, with average cost savings set at $210 million.

This methodology could not be applied to estimate the cost impact of most other alternatives under consideration because of the absence of independent data on which to calculate the differences in wages resulting from these other options for non-surveyed areas. Also, and perhaps more importantly, this methodology measures only the changes in Davis-Bacon rates, not actual changes in wage rates paid on Davis-Bacon projects. The further one moves the Davis-Bacon minimum below the average, the less reflective it is of actual prevailing wages and hence of the real cost savings to be anticipated.

Although the Department concluded that such an approach would be inconsistent with the statute's intent, we developed a crude estimate of the potential cost savings from the alternative calling for a range of wages rather than a single rate for each determination in a locality, using our methodology and the results of a CEA study which estimated the net impact of setting minimum wages on Davis-Bacon projects. This estimate is similar to the alternative that establishes a range of wage rates, since the lowest rate in the range effectively becomes the Davis-Bacon minimum. This procedure produced cost savings estimates ranging from $505.3 million to $631 million with a midpoint estimate of $568.2 million for this option.

Much of these cost savings would be passed on to small contractors. The Census Bureau's Economic Census of Construction shows that in 1977 there were 53,665 construction establishments with fewer than 20 employees involved in construction work. These small contractors accounted for about 56 percent of all such construction establishments, but only about 17 percent of employment. While we could use relative employment percentages to distribute the total cost savings from adopting alternative wage determination procedures among large and small contractors, this would be inappropriate since smaller contractors are more likely to pay wages normally below Davis-Bacon rates, resulting in relatively larger cost savings for small contractors from any lowering in Davis-Bacon rates. Although we can not develop numerical cost estimates, the cost savings would be expected to be substantial.

While our approach provides a reasonable approximation of the wage cost savings expected to result from the final regulation, it should be stressed that they are only a proxy for actual construction *cost* differences. Nevertheless, these wage estimates are a useful indicator of the order of magnitude of the lower construction costs that may be expected from the final change in the definition of prevailing wages.

B. Cost Impact of the Expanded Issuance of Semi-Skilled Classifications

The Department has long permitted exceptions from predetermined Davis-Bacon rates set for a craft classification for apprentices and trainees who are in approved programs. The Department has also recognized a helper classification in some areas under certain well-defined situations where (1) it constitutes a separate and distinct class of workers (i.e., the scope of duties of the helper is defined and can be differentiated from journeyman duties); (2) the particular helper classification prevails in the area; and (3) the helper is not used as an informal apprentice or trainee.

During its review, the Department concluded that the current policies regarding semi-skilled crafts do not adequately reflect construction industry practices, in particular, the widespread use of helpers to perform certain craft tasks. The proposed revisions allowed for the issuance of semi-skilled classifications such as helpers or other subclassifications of a journeyman class that could be identified in the locality. Helpers were permitted as long as their use did not exceed a ratio of one helper to five journeymen. The proposal further allowed contractors to conform rates after award for helper classifications which were not issued in the wage determinations, but which the contractor felt were appropriate to performing the contract work so long as those classifications were currently utilized in the locality. The PRIA estimated that these proposed changes would result in significant cost savings of about $450 million in Fiscal Year 1982.

Many commentators viewed these cost estimates as excessively high. Contractor associations welcomed the helper classifications, but criticized the 1:5 ratio as an artificial rule that would prohibit the following of area practices. These groups argued that the ratio, coupled with the considerably lower ceilings specified by collectively bargained contracts, would significantly dampen the cost saving—to about $200 million annually. Construction unions, on the other hand, did not comment on the ratio *per se*, but instead focused on the PRIA assumption that each helper employed on Davis-Bacon projects would replace one journeyman. They argued that the analysis overstated the cost savings because it ignored the low productivity of helpers relative to journeymen and the likelihood that helpers would be better substitutes for lower-paid laborers and apprentices than for journeymen. The construction

unions also pointed to possible long-term cost increases due to a shortage of skilled craftsmen.

These comments prompted a thorough re-evaluation of the helper cost methodology. Some comments required no new adjustment; for example, our methodology already controlled for the minimal use of helpers on union projects. The revised helper methodology incorporated relevant criticisms from both business and labor groups to the extent permitted by available data. The revised estimates were also based on more recent data showing a sharp drop in construction industry employment (and hence anticipated helper employment on Davis-Bacon projects).

The final helper regulations preserve the basic elements of the proposal with several changes. These changes include: (1) Lowering the ratio from 1:5 to 2:3 (2 helpers allowed for every 3 journeymen) to better reflect the diversity in industry practices, and (2) permitting helpers to include multitrade, as well as single craft, helpers to provide employers with maximum flexibility in their employment practices on Davis-Bacon jobs.

The basic methodology remains the same as that found in the PRIA—using evidence on the mix of skills in the construction industry *as a whole* to predict the increased helper employment on Davis-Bacon projects as a result of the regulation. The expected savings in wage costs on Davis-Bacon construction are derived by multiplying estimates of increased helper employment by changes in wage bills for contractors.

However, in the present analysis, we develop separate estimates of the likely cost savings from the regulations for the unrestricted use of helpers and for alternative ratios of helpers to journeymen. In addition, we test the sensitivity of the estimates to various assumptions regarding the skill level of workers replaced by helpers. One set of cost estimates assumes that helpers replace journeymen only. A second series of cost estimates allows helpers to replace laborers as well as journeymen.

The initial step involves determining the number of construction workers employed on Davis-Bacon projects and the number of helpers likely to be employed on Federal and federally-assisted construction work. For this analysis, we use a more recent estimate of construction employment showing that there were 758,000 construction workers on Davis-Bacon projects during 1980 (the PRIA used an estimate of one million total employees in the construction industry covered by Davis-Bacon in 1979). The FRIA discusses the derivation of these estimates in further detail.

While their skill composition is unknown, we assume that in the absence of any restrictions on their use, the helper share of employment on Davis-Bacon projects would be identical to that found overall in construction (excluding residential construction under 5 stories). The estimated helper share based on the 1976–1977 BLS survey of large metropolitan areas would be 3.2 percent and 5.6 percent, depending on whether we used the entire survey or only those occupations in the survey that specifically identify helpers.

However, the helper shares estimated directly from the BLS survey may be biased because of its limitation to large metropolitan areas and the 1976–1977 period. The BLS survey shows about 78 percent of construction workers under collective bargaining agreements. Although such agreements are almost certainly more prevalent on Davis-Bacon construction that on all construction, the BLS survey probably over-represents the percent of union workers on Davis-Bacon projects nationwide. This means that estimates of the helper employment share based on the BLS survey will be too small compared to total Davis-Bacon construction. To correct this bias, we base alternative helper estimates on the conservative assumption that the true union share of Davis-Bacon employment is 50 percent. Weighting the individual estimates found in the BLS survey data of helper employment shares within the union and non-union sectors produces adjusted estimates of the helper share of 5.98 percent and 9.4 percent.

This gives us four estimates of helper employment. Assuming that the high unionization rate found in the BLS survey of large cities prevails in all areas with Davis-Bacon projects, we can estimate that there will be between 24,256 and 42,448 additional helpers on Davis-Bacon projects. Assuming that 50 percent of the workers on Davis-Bacon jobs are organized would translate into higher estimates—45,328 and 71,252 additional helpers on Davis-Bacon jobs.

When helpers substitute for laborers in some cases as well as journeymen, the helper estimates need to be further adjusted. While it is difficult to evaluate the precise extent of this combined substitution, we use the estimated helper shares from above, but assume that helpers replace both types of labor as long as the proportion of laborers and journeymen found in the BLS Survey remains constant (i.e., the laborer to journeymen ratio). The BLS data shows the laborer to journeymen ratio to range between 2:5 and 5:11 for all construction projects in the sample. This produces estimates of helpers ranging from 24,256 to 64,056.

The second step is to calculate the expected hourly wage cost savings from hiring these helpers instead of journeymen. Using the PRIA procedures, we estimate the average wage differential between helpers and journeymen, based on the same 1977 BLS survey of large metropolitan areas adjusted to FY 1982 levels. This produces estimates of $5.72 and $5.73 as the absolute wage differential between helpers and journeymen.

For the adjusted estimates where we assume that 50 percent of Davis-Bacon is covered by union contracts, it was necessary to recalculate the wage rates accordingly. Separate union percentages for journeymen and helpers from the BLS survey were used to weight the union and non-union average hourly wage rates to arrive at the new overall averages of about $6.70.

The above estimates of wage differences assume that helpers replace only journeymen. If helpers substitute for laborers in some cases as well as journeymen, the wage differences in some cases will narrow substantially—ranging from $4.95 to $5.71. The final regulatory impact analysis describes these wage calculations in further detail as well as the biases involved in the use of average wage rates.

The next ingredient needed to compute the expected cost savings is an estimate of average hours worked annually in construction. The PRIA used an estimate of 1535 hours worked per year. However, in light of the ABC comments showing that contractors' annual work hours average well over 1900 hours and the fact that seasonality is already controlled for by our use of annual averages of monthly employment levels, we used 1924 hours from *Employment and Earnings* published by the Bureau of Labor Statistics as the estimate of annual hours worked per full year construction worker to convert helper employment levels into their total hours equivalents.

Our estimates of the resulting cost savings from increased recognition of helpers with no ratio were obtained simply by multiplying numbers of helpers by hours worked in a year (1924) and various estimates of the existing wage differential between helpers and journeymen and laborers.

However, where there is a ceiling restriction on the employment of helpers to journeymen, another step is necessary—modifying the methodology

to lower the estimates of helper employment. The new calculations assume that any ceiling has no impact on the union sector, since there are few helpers in union firms. However, the 1976–1977 BLS survey suggests that outside of residential construction under 5 stories, the average non-union ratio of helpers to journeymen is around 1:4. This means that the proposed 1:5 ratio or to a lesser extent the final 2:3 ratio would be limiting for some non-union firms and that the overall helper:journeymen ratio on federally-finded non-union projects would fall somewhat below 1:5.

For our analysis, we assumed that the proposed 1:5 regulation would result in an average ratio of 1 to 5.5 on federally-funded non-union projects, while a ratio of 2:3 would result in a higher average of 1 to 4.25 on these same projects. These new ratio assumptions have the effect of lowering the previous helper estimates.

Finally, when helpers substitute for laborers in some cases as well as journeymen, the helper estimates need to be further adjusted in the presence of a ratio. In this case, the ceiling restrictions lower helper employment in the non-union sector in two ways—(1) Directly decreasing the allowed substitution of journeymen, and (2) increasing the number of laborers required to keep the proportion of laborers to journeymen constant.

The results of these calculations show that with a 1:5 ceiling and with helpers replacing journeymen, the estimated cost savings range between $263.49 million and $535.43 million. The corresponding midpoint estimate is roughly $400 million. This is the revised "best" estimate for the proposed regulation if helpers can replace only journeymen. With this same 1:5 ceiling, but with helpers replacing both laborers and journeymen, the estimated cost savings drop by approximately one-third—to $303.41 million on average. This supports the unions' contention of lower cost savings when helpers substitute for low skilled as well as higher skilled workers.

In light of the comments on the August proposal, the Department has decided to raise the ceiling from one helper for every five journeymen to two helpers for every three journeymen. The higher ratio will better reflect the wide diversity in practices among different types of construction and localities. The 2:3 ratio also increases the cost savings substantially.

If helpers replace journeymen only, the estimated cost savings range from $305.76 million to $640.95 million. This places the midpoint estimate of the likely cost savings with a 2:3 ceiling on the employment of helpers relative to journeymen at roughly $473.36 million. (This compares well to the PRIA estimates of $450 million in cost savings for the proposal under the assumption that helpers substitute only for journeymen.)

Once the final regulation is in effect, the more likely situation is one in which helpers would in some instances replace laborers as well as journeymen. If this is the case, the estimated cost savings range from $246.43 million to $479.89 million. This puts the average estimate of cost savings at $363.16 million assuming that helpers, in fact, replace both laborers and journeymen. This estimate also represents our "best guess" about the likely impact of the final regulation.

On the basis of this evidence, the Department has concluded that the final regulation will result in substantial cost savings and at the same time reflect industry practice, thereby providing contractors with the necessary flexibility in choosing their optimal employment mix on Davis-Bacon jobs. The final helper provision will also provide substantial cost savings for smaller contractors who predominate in the construction industry.

C. Summary

The final revisions discussed above, in conjunction with the changes to Part 5 of the Davis-Bacon rules (e.g. deletion of the requirement for submission of weekly payroll records) will result in substantial cost savings annually of $585 million for both contractors and the government while still assuring protection of local wage rates and practices. The changes will have a substantial beneficial impact on small contractors.

Copies of the complete analysis may be obtained from the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

Conclusion

The Solicitor of Labor has determined, in accordance with Executive Order 12291, that this regulation is clearly within the authority delegated to the Secretary of Labor by the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), Reorganization Plan No. 1950 (5 U.S.C. Appendix), and the Copeland Act (40 U.S.C. 276c), as well as 5 U.S.C. 301, 29 U.S.C. 259, and the laws listed in Appendix A of this part. The Solicitor, as set forth above in the discussion of the major issues, has determined that this regulation is consistent with the Congressional intent of the Davis-Bacon and related Acts that wage determinations issued under those Acts reflect the rates prevailing on similar construction in the locality, and that such wage determinations be incorporated in contracts subject to those Acts.

Dates of applicability. The provisions of this part shall be applicable only as to wage surveys completed on or after July 27, 1982. Except for § 1.6, which shall be applicable only to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after July 27, 1982. None of the revisions herein shall be applicable to any contract entered into prior to July 27, 1982.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

Accordingly, 29 CFR Part 1 is revised as set forth below.

Concurrent with the publication today of this final rule, the final rule previously published in the **Federal Register** on January 16, 1981 (46 FR 4306) and subsequently stayed is hereby withdrawn.

Signed at Washington, D.C. on this 25th day of May 1982.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

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1.2 Definitions.
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Appendix A.
Appendix B.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C.

276a—276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a—276a–7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Assistant Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the **Federal Register** for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a)(1) The "prevailing wage" shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the "prevailing wage" shall be the average of the wages paid, weighted by the total employed in the classification.

[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

(b) The following types of information may be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should include the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.

(4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this Part.

(d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. Data from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations

under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1671–DOL–AN.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF–308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may publish a general wage determination in the **Federal Register** when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *provided,* that questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

§ 1.6 Use of effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the **Federal Register,** shall contain no expiration date.

(b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of

construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of projects assisted under the National Housing Act, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3) (ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the **Federal Register** prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the **Federal Register**, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *provided* that the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *provided*, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as

appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination. Wages paid on similar construction in surrounding counties may be considered, *provided* that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) Classifications and wage rates will be issued for identifiable "classes of laborers and mechanics." Semi-skilled classifications of helpers will be issued when the classifications are identifiable in the area. The use of helpers, apprentices and trainees is permitted in accordance with Part 5 of this subtitle.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

Appendix A

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1–7, 46 Stat. 1494, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

3. Housing Act of 1950 (college Housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113).

11. Indians Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256; 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4)).

Note.—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1–1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code.

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (Sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

Appendix B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617–223–5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212–399–5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone: 215–596–1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404–881–4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312–353–7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214–767–6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816–374–5386).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304–837–4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415–556–3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206–442–1916).

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